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Regulation of trafficking in human beings in international documents and documents of the Republic of Lithuania: comparative analysis

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Abstract

Phenomenon of trafficking of human beings has become continuing concern for majority countries in the world not bypassing Lithuania during the last decade. Paying attention on latency, prevalence and various forms of expression of this crime, international, regional and national documents defining phenomenon of trafficking in human beings and concerned aspects.

Despite of testimonies that trafficking in human beings is a full-blown problem, it is rather hardly recognizable in our society. Often this phenomenon is being understood rather narrow and directly. Instead of paying attention on reasons, factors and consequences of trafficking in women, exotic shade is being given to this problem, for ones causing a crooked grin, – for others glee "what they wanted and got the same". Trafficking in women is often valued as a

problem of these women sold and bought only having not recognized other essential features of this phenomenon – demand aspect, interests of criminal world, hazards it is rising for security of society.

In the article authors are comparing international and regional documents, emphasis of characters of documents and representative consolidation of criminal norms of other European Union countries for trafficking in human beings shows evolution, development and change of analysed phenomenon and view of various organisations on it. Article is oriented on legal and practical decisions of trafficking in women – an introduction to international documents and legal acts being valid in Lithuania is being done.

Keywords

The Convention for the Protection of Human Rights and Fundamental Freedoms, women, criminal policy, crimes against personal freedom, human trafficking, the use of slave labor.

Introduction

Trafficking in human beings worldwide is being understood as a form of slavery and is being named as one of major violations of human rights. As per cases of kidnapping or trafficking such rights given with The General declaration of human rights and international legal acts forbidding to make a persons ownership of someone else oven for a short time are being violated.

Norm punishing for trafficking in human beings has appeared in Lithuanian criminal code just in 1988, but in international scope this problem had been

under care more longer before. History of development of trafficking in human beings meaning has age of more than a hundred year.

Historical origin of trafficking in human beings – trade of slaves. The first agreement condemning trade of slaves has been composed in 1814 between France and Britain.¹

Primary definitions of analysed phenomenon have risen in 1904 and 1910 in international agreements made by thirteen states for cooperation strug-

¹ Akehurst, M., Malanczuk, P. (2000), *Contemporary introduction of international law*, Vilnius, p. 48.

gling trade of the white slaves women. Exploitation of girls (under convention dated 1910 – means women up to 20 years) comes into category of "the white slavery" even instead of usage of sanctions against them².

Comparative analysis of the trafficking regulation

It is foreseen in 1 article of a convention for slavery accepted on 25th of September 1926 that slavery – a status of a person, with whom the behaviour is totally or partially as with a property. Definition of slaves is being given in the second part of the article, and objective characters of these essentially meet objective characters of nowadays trafficking in human beings. Trade of slaves has been understood as activities concerted with:

- a) kidnapping;
- b) acquisition of a person;
- c) acquisition having a purpose to transmit, change a person;
- d) disposal having a target to enslave. But the target of the crime really differs: in this conventions trafficking in human beings having a purpose to make

2 Fedosiuk, O. (2005), "Trafficking in human beings in criminal law and practice of courts", *Law*, No. 54, p. 72.

person a slave, i.e. to act with him partially or totally as with a thing is being mentioned (1 art. 1 p.)³.

International convention of supersession of trafficking in mature women dated 11th of October 1933 has described this criminal phenomenon as delivery of women having immoral purposes, seduction of inclusion of other persons passion meet in another country, even if it is in agreement.⁴ Description given in this convention is actually erased differences between trafficking in women and profiting from their prostitution in total.

Later having paid more attention on protection of human rights and freedoms, also defence of their damaged rights, in the same time problems of trafficking and women prostitution have attained more attention as well. People freedoms of equality, non-discrimination, personal integrity and movement including other legal principles have been stated in international and national legal acts. 4 article of Universal declaration of human rights published on 10th of December 1948 by United Nations has pronounced: no one can be held in

3 *Human rights. Set of international documents*, Vilnius, 1993, p. 126.

4 Fedosiuk, O. (2005), "Trafficking in human beings in criminal law and practice of courts", *Law*, No. 54, p. 73.

slavery or servitude of slavery and the slave trade shall be prohibited"⁵.

Furthermore, meaning of trafficking has been identified as export of prostitution only and has not used to include exploitation of women having not overstepped margins of one territory. Named view of sexual exploitation has been continued in UN Convention for supersession of the traffic in persons and of the exploitation of prostitutions accepted in 1949⁶, having named illegal all forms of participation in prostitution of other persons. The punishable offenses in Convention have been attributed to:

1) crime formed in advance concerning trafficking, i.e. immoral purposes, seduction of inclusion of other persons passion meet in another country, even if it is in agreement detailing that a) victim can be not only a woman, but also "a person"; b) trafficking is not necessarily related with victim's departure to another country;

2) exploitation of other person for prostitution, even if it is in agreement;

3) keeping of brothel, directing it or it's conscious funding;

4) tender of accommodations or other places or rent of these for prostitution of other persons.

Paying attention of the fact that laws of majority countries are neither forbidding nor the prostitution, nor an organisation of it as per activity, it can be stated that targets of this convention have not been successfully reached. Otherwise, mentioned convention had an impact on meaning of trafficking under aspect that agreement of explicated person can be done in prominence, trafficking is not necessarily by connected with transportation of persons from one country to another, persons of both genders can be explicated..⁷

"Convention due to slavery and slavery-like institutes and the abolition of customs" dated 1956, where description of slavery in comparison to convention dated 1926 is amended with meaning "debt bondage serfdom and slavery conjugal". United Nations conventions due slavery dated 1926 and 1956 have supported formation of meaning of traf-

5 *Human rights. Set of international documents*, Vilnius, 1993, p. 10.

6 "Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others", available at: <http://193.194.138.190/html/menu3/b/33.htm>

7 Lindh, A., Klingvall, M. (2001), *Trafficking in Women and Children in Asia and Europe. A background presentation of the problems involved and the initiatives taken*, Ministry for Foreign Affairs, Stockholm, 60 p.

ficking meaning that these have formed nowadays meaning of slavery and trafficking. Slavery under these conventions – status or position of a person, in case authorisations concerned with property right is being applied on him partially or absolutely. Slaves' trade meaning included all forms of disposal of a slave (acquisition, transmittance, change and transportation), also kidnapping, acquisition or disposal of him having a purpose to push him into slavery. Formulations of conventions have also impacted formation of nowadays meaning of trafficking, as forbidding leaving of a person under a control of a creditor as a warranty of loan repayment. (*eng.* debt bondage), such situations, when parents transmit or gives a daughter into a marriage without a right to deny, when a woman is being inherited after a death of husband, when parents transmit or give a child to other persons under purposes of it's exploitation⁸.

In the beginning of tenth decade institutions of European Union have started to pay more attention on trafficking. Different meanings of trafficking have been in use for that moment – one

description related this criminal phenomenon transportation of victims from one country to another under purposes of exploitation⁹, other has not shown such a character. In some descriptions exploitation areas have been related with prostitution and other sexual abuse, wider view has been stated in others including forced labour and other areas of exploitation. Otherwise, all descriptions used to evaluate statement that this crime is not necessarily concerned with coercion and that victim can be introduced into exploitation as using deception, pressure, intrigues, using it's difficult status and etc., in cases of children presence of this impact has no juridical meaning.

Council of Europe Committee of Ministers recommendations to members are also being implemented in Lithuania: recommendation No.9(91)11 the trafficking of children and young people for sexual exploitation, pornography and prostitution; recommendation No.R(96)8 crime policy in Europe in a time of

⁸ "Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery", available at: www.unhchr.ch/html/menu3/b/30.htm

⁹ "Common activities (97/154/TVR), Adopted by the Council of the European Union Treaty of Article K.3 of the fight against trafficking in human beings and sexual exploitation of children", available at: <http://eurlex.europa.eu/Notice.do?mode=dbl&lng1=en,lt&lang=&lng2=cs,da,de,el,en,es,et,fi,fr,hu,it,lt,lv,mt,nl,pl,pt,sk,sl,sv,&val=221539:cs&page=&hwords=null>

change; recommendation No.R(97)13 concerning intimidation of witnesses and defence (the defendant) rights; recommendation No.R(2000)11 on actions against trafficking in human beings for sexual exploitation.

Under aspect of prevention of trafficking of human more meaning Council of Europe Committee of Ministers recommendation No.R(2000) 11 "on the action plan for a fighting against kidnapping", accepted on 19th of May 2000 has been named. Description of trafficking in human beings is being stated in this document, the main common principles are being named using these the whole policy is to be implemented fighting against trafficking in human beings and protecting rights of victims of trafficking in human beings. Here is mentioned that:

- legal and practical measures should be taken by granting rights of victims of trafficking in human beings and legal interests;

- creation of rehabilitation programs for victims of trafficking in human beings should be kept;

- measures letting clarify traffickers or organisers of trafficking in human beings should be necessary taken, and such persons should be prosecuted and punished;

- it is necessary to keep trafficking in children and women as a part of organised international criminalisation.

It is foreseen in the mentioned recommendation that it is necessary to coordinate work of various agencies (police, customs, law enforcements social workers and officers of diplomatic offices) by stating and clarifying cases of trafficking in human beings. Role of nongovernmental organisations is also very important in organisation of support for victims of trafficking in human beings.

Undoubtedly the most present act for fighting trafficking in human beings is accepted on 15th of November 2000 UN protocol supplementing convention against international criminalisation "Due trafficking in persons, especially women and children, prevent, suppress and punish trafficking in persons", (further – Palermo protocol).¹⁰ This document has been signed by almost 100 countries. Seimas of the Republic of Lithuania has ratified it on 2nd of April 2003. This universal document reflects a trend to treat meaning of trafficking widely, including sexual exploitation, where this criminal phenomenon has expressed mostly, also other known areas, where trafficking in human beings is active (slavery, forced

¹⁰ *State News*, 2003, No. 49-2157.

labour, transportation of children under purposes of illegal adoption, children exploitation for pornography, debt bondage, serfdom and marriage slavery), as well as for upcoming in the future, ex., transportation of human beings for organ transplantation.

One can state that this document has formed the final meaning of trafficking that has included and joined all descriptions mentioned before, has totalised view of various international organisations on this problem. Description of trafficking given in 3 article of the protocol has been supported by European Union on 19th of July 2002 having accepted EU Council framework on combating trafficking in human beings¹¹ (further– Decision of framework).

In Palermo Protocol (and later in mentioned EU Council decision) universal description of trafficking in human beings including various areas of exploitation human being – as well as sexual exploitation, though that this criminal phenomenon is mostly expressed, as well as other known or possibly upcoming has been formed. Moreover, crossing of state borders is not being mentioned anymore

in the description as necessary character of trafficking in human beings, statement not letting to prominence victim's agreement to be exploitive has been stated. Countries having signed the Protocol including Lithuania have obliged to criminalise trafficking in human beings in full scope and to implement strict criminal policy fighting this criminal phenomenon. Totalising description of trafficking in human beings given in 3 article of the Protocol and repeated in 1 article in EU Council decision, one can exclude four basic elements of nowadays meaning of trafficking in human beings:

1. Trafficking in human beings – a transaction with an object – a human being composed having a purpose to exploit the human being. These sorts of transactions are being mentioned a the Protocol – recruitment of a person, transportation or a person, transmittance of a persons and hiding of a person.

2. Areas of exploitation can be various – prostitution or other sexual exploitation, forced labour, slavery or other activity similar to slavery, ministry and removal of organs. In EU Council decision it is detailed that sexual exploitation includes exploitation for pornography as well. Therefore, definition relates this phenomenon not only with exploitation of one gender human beings (women)

11 "19th of July 2002 EU Council framework on combating trafficking in human beings No. 2002/629/TVR", available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0629:LT:HTML>

for purposes of prostitution, but also with other areas of public life, where trafficking in human beings can be expressed.

3. Trafficking in human beings – is a crime concerned with some impact on suffered that lets include this person into exploitation or to control it. Character of vulnerability to abuse is detailed in EU Council decision. This sanction shows existence of trafficking in human beings, when suffered has no real or sufficient chance to choose, as only to give in for such vulnerability.

4. Agreement of a victim of trafficking in human beings in advance letting to make actions with it (to be exploited) is not meaning juridical, in cases this agreement is received by using nor one mentioned sanction. It is difficult no to agree with this, for such "agreement" usually shows only hopeless status of the victim for it's economical lacks, other unfavourable life circumstances and others. While speaking about exploitation of a child. i.e. persons up to 18 years is being named as trafficking in human beings even, when there was no named impact, for minors are less able to control their emotions, feelings, to evaluate their chooses rationally as well as consequences of their actions and to valuate content of "offer" for their social and economic maturity in comparison to adults.

Therefore, legal acts discussed above are not of direct operation, for the guilty for trafficking in human beings is being prosecuted into criminal liability under criminal acts of the country, and not under international agreement or decision of Council framework.¹²

German legislator concerns meaning of trafficking in human beings with some or other coercion of a person, it's recruitment to act in prostitution or continue this business or to make sexual actions a persons being of hopeless status in other country. CC of Germany "Crimes against sexual self-determination" paragraph 180a liability for exploitation of human beings making in prostitution and two especial forms of trafficking in human beings are foreseen: CC paragraph 180b simple trafficking in human beings and in CC paragraph 181 qualified, i.e. difficult cases of trafficking in human beings are foreseen¹³.

In 1 part of this code paragraph 180 trafficking in human beings alternative acts of human being is named making these of selfish purposes other persons have been impacted and forced: to

12 Ruggiero, V. (1997), "Trafficking in human beings: slaves in contemporary Europe", *International Journal of the Sociology of Law*, No. 25, pp. 231-244.

13 "Strafgesetzbuch", Zugriffsart: www.bundesrecht.juris.de/bundesrecht/stgb

act in prostitution or to continue their activity (when guilty has known that person is in difficult status); or for hopeless status of a person (about that guilty has also known) in concern with being in other country to make sexual activities against him or letting the third person to make analogical activities; also activities by that younger than 21 years person is being forced to act in prostitution or continue it. Person that forces other person to act in prostitution by guile; recruits him in guile or forced kidnaps a person of hopeless status in concern with being in other country for presenting for sexual activities he should make for the third person against him or letting the third person to make analogical activities his own against; or recruits persons of hopeless status in concern with being in other country as he knows for forcing them to act in prostitution or continue it, so such person is being prosecuted under criminal liability for qualified trafficking in human beings. Paragraphs mentioned concerns trafficking in human beings with sexual exploitation essentially. Moreover, paragraph 236 of CC where liability for trafficking in children less than eighteen year is foreseen, sexual exploitation is not being accented.

Swedish legislator has accepted law in June of 2002 "for prohibition of

trafficking in human beings for sexual purposes", where meaning of trafficking in human beings is stated and ways of fighting against trafficking in human beings are detailed. Statements mentioned are incorporated into CC. Criminal liability is foreseen for persons that using illegal force, guile or acting in other unconscious way promotes a person to come abroad having a purpose to include into prostitution of exploit sexually. One, who is transporting, hiding or helps persons in other way after he reaches other country having the same purposes. For analogical activity against minor punishment is being applied, when guile or force is not being used. The characteristic of the only European country – Sweden criminal laws that a not only trafficker in human beings, but also persons that contributes exploitation of persons by paying for sexual services.¹⁴

Palermo protocol has been ratified by Great Britain, Norway, France, the Netherlands, Estonia and other countries where definition of trafficking in human beings is foreseen in an especial article of CC.

Analysis of meaning if trafficking in human beings in documents of the Republic of Lithuania is necessary to be

14 "Swedish Penal Code", available at: www.legislationline.org

started from the main law of the Republic of Lithuania – Constitution. In article 21 of Constitution of the Republic of Lithuania one of the basic natural rights of a human being is being stated: "The human person is inviolable". Inviolability of human person is a ground of majority of other rights and legal principles implementation of that is concerned with work, health care and other aspects. This constitutional norm states grounds of security of a human person, what means that:

1) in case behaviour of a human person is nor raising danger for other human persons or in any way can not make damage on interests of other human persons unreasonably, it can not be stricken in any way;

2) human persons as such can not be affected in any way, except cases mentioned in laws.

Moreover, one should mention that in part 3 of article 138 of Constitution of the Republic of Lithuania is set that: "International agreements ratified by Seimas of the Republic of Lithuania is an integral part of legal system of the Republic of Lithuania." Constitutional Court of the Republic of Lithuania has noted in the conclusion "Due European convention of human rights and fundamental freedoms protection"¹⁵ that this

¹⁵ *State news*, 1995, No. 9-199.

constitutional statement against the Convention means that having been ratified and into force it will become integral part of legal system and should be applied as laws of the Republic of Lithuania.

Reaching to cross the road for trafficking in human beings Seimas and Government of the Republic of Lithuania have taken legal and organisational measures to minored these processes and create appropriate mechanism of their control.

One of the basic directions of activity of Government of the Republic of Lithuania in area of reformation of legal system, legal order and inner policy – to implement radical prevention and control measures of criminalisation (especially international organised): to remove reasons of these phenomenon, to modernise and strengthen system of law enforcement and other institutions, to support activity of non governmental organisations to disassemble networks of criminal structures acting in trafficking in human beings and organisation of prostitution, children forcing and commercial exploitation.

Seimas of the Republic of Lithuania has ratified United Nations conventions of the rights of the child on 3rd of July 1995, where article 35 is announcing that countries participators are taking all

necessary measures in national, bilateral and multilateral way having a target to cross a way for kidnapping, trafficking and smuggling in children not depending on purposes and forms, and United Nations convention on the elimination of all forms discrimination against women ratified on 10th of September 1995, where article 6 obliges country participator to take all necessary measures that all types of trafficking in women should be stopped as well as usage of women for prostitution.

Criminal liability for trafficking in human beings in Lithuania and activities concerned with it has been stated in law dated 2nd of July 1998¹⁶, by amending the CC with article 1313. Norm of trafficking in human being in Lithuanian CC has changed twice till nowadays since 1998 (acceptation Together with common norm in article 147 "Trafficking in human beings" of CC of the Republic of Lithuania, where requirement of Palermo Protocol is being implemented, especial norm for securing persons having not reached 18 years, i.e., children, – stated in article 157 of CC. Article 1471 has been accepted in law dated 23rd of June 2005 foreseeing liability for exploitation of persons for forced labour.

¹⁶ *State news*, 1998, No.67-1937.

Recent valid disposition of trafficking in human beings meets requirements of international legal acts. In the norm mentioned as in Palermo Protocol alternative activities (sold, bought, transmitted in other way, acquired, recruited, transported, hold) as well as additional objective character – type of making the activity (using physical violence or threats or taking off a possibility to resist in other way, or using dependence or vulnerability or a person, or using fraud or paying money, or tendering other pecuniary benefit for a person that actually controls suffered person), and subjective characters (guilty has known or reached suffered person to be included into prostitution either it would be rewarded from prostitution of this person or it would be exploited for pornography or forced labour).

It is notable that in redaction of article 147 of CC of the Republic of Lithuania in 2005 criminal liability for this crime for juridical person has been set for the first time as it is required by statements of article 4 of European Council framework.

Speaking about UN convention of 2001 Against international organised criminalisation amending Protocol due prevention of trafficking in human beings, especially in women and children, stoppage and prohibition of pursuit of

it and under European Council framework decision dated 19th of July 2002 2002/629/TVR due fight against trafficking in human beings and redaction of article 147 of CC of 2005, one can state that this redaction meets mentioned legal acts, but formulations fro EC framework decision have been transmitted into CC, for UN Protocol shows more abstract purpose of trafficking in human beings – exploitation of persons for prostitution or sexual exploitation of other forms, forced labour or services, slavery or practices recalling slavery, organs transplantation (art. 3), and art. 147 more detailed purposes: prostitution, pornography, forced work.

Review of various countries documents and criminal laws lets make a conclusion that acceptance of international documents, recommendations of institutions of European Union, directives are the necessary measure in unification of legal regulation of trafficking in human beings. Exception statements of this phenomenon is difficult for trafficking in human beings is concerned with business of prostitution in criminal laws of majority of countries. There is no universal regulation of this problem. Undoubtedly, one can state that some sorts of trafficking in human beings have denied at all (ex., slavery), but trafficking in human beings

having purpose to exploit them sexually stays actual problem in civilised countries as well, where more various forms of trafficking in human being raised.

Criminal laws – are *ultima ratio* measure, so adjustment of norms of Palermo Protocol and criminal law in all countries of European Union should be essential and logical action.

Criminality for trafficking in human beings is stated in criminal law of the republic of Lithuania, but under our opinion this is not reflecting detailed meaning of trafficking in human beings. Although in redaction of 2005 of article 147 of CC has been prepared keeping requirements of international acts, formulation of the article is not as ideal logically and in linguistic way, for first disposition of the article is composed of even eight lines full of excising naming and structure is not fully clear. Furthermore, one of necessary characters of disposition – purpose, so in all cases reaching to incriminate norm of trafficking in human beings to the guilty, it is necessary to prove that person reached or even have known that a victim will be explicated for prostitution, pornography or forced labour, but it is very difficult to make such in practice.

Paying attention on analysed international and inner normal acts, one

can see that trafficking in human beings – any transaction or agreement having the object human being independently on age reaching to exploit or use object of the transaction of purpose of benefit.

Trafficking in human beings gets new type recently: human being are being sold not only to sexual slavery, but also number of children being transported abroad to steal is increasing, and adult men are being transported for forced labour. Lithuanian children mostly derived from families of social risk or living in foster home are being transported to other EU countries to steal from supermarkets, in Nordic countries mostly. Groups of children are being concretely shown what to steal, and what is interesting that part of children are going having known what they are to do.

Lithuanian prosecution Office identifies such children as victims of trafficking in human beings for they are being promised with golden mountains that they will earn lots of money by snitching, but they are being cheated.

Conclusion

Legal acts of the Republic of Lithuania essentially meet requirements of international legal acts set for control and prevention of trafficking in human be-

ings and prostitution i.e., United Nations, European Union, European Council, Europol, other international institutions. Nevertheless one of the most serious steps granting adjustment of legal act of the Republic of Lithuania with statements of international legal acts would be ratification of United Nations convention against organised criminalisation and it amending Protocol for trafficking in human beings, especially in women and children, stoppage and prohibition of pursuit of it in the near future;

Laws of the Republic of Lithuania are not stating detail mechanism of compensation of damage (especially moral) made for victims of trafficking in human beings and suffered, but are stating liability of juridical person for trafficking of human beings;

Phenomenon of trafficking of human beings has become continuing concern for majority countries in the world not bypassing Lithuania. Paying attention on latency, prevalence and various forms of expression of this crime, international, regional and national documents defining phenomenon of trafficking in human beings and concerned aspects are being analysed. Comparison of international and regional documents, emphasis of characters of documents and representative consolidation of criminal norms of

other European Union countries for trafficking in human beings shows evolution, development and change of analysed phenomenon and view of various organisations on it.

Laws of the Republic of Lithuania in comparison with requirements of requirements set by international legal acts are not setting a possibility to release victims and suffered from trafficking in human being from legal liability for such activities as illegal immigration

(including immigration using falsified documents) and presence in Lithuania (except cases, when crossed border of the Republic of Lithuania reaching the third country), prostitution and other, also are not letting to apply special status (resident status) for victims and suffered from trafficking in human being for i.e., to stay in Lithuanian for an appropriate period while these persons can make a decision for opening a criminal case and testimony in a criminal case an so on.

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**Регламентирование в сфере противодействия торговле
людьми международном и литовском законодательствах:
сравнительный анализ**

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Аннотация

Основные вопросы, рассмотренные в статье, относятся к литовскому законодательству, направленному на противодействие торговле людьми и рабству, его проблемам и изменениям, также рассмотрено соотношение литовского уголовного права по торговле людьми и соответствующих положений Европейского союза. Заключительная часть статьи посвящена оценке текущего состояния литовского законодательства, направленного на борьбу с торговлей людьми и его ожидаемой эффективности.

Ключевые слова

Конвенция о защите прав человека и основных свобод, женщины, уголовно-правовая политика, преступления против свободы личности, торговля людьми, использование рабского труда.

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